**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act | CC Docket No. 93-22<br>RM - 7990 |

# REPLY COMMENTS OF PILGRIM TELEPHONE, INC.



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Pilgrim Telephone, Inc. ("Pilgrim"), by and through its attorneys, hereby files its reply comments before the Federal Communications Commission ("Commission") in response to the

also filed comments with and appeared at a workshop sponsored by the Federal Trade Commission ("FTC") in conjunction with its rulemaking conducted to address issues related to consumer disclosure, preamble and advertising used in conjunction with pay-per-call services.[4] Pilgrim has attached a copy of its comments filed with the FTC to this reply.

new and competitive interstate telecommunications offerings in contravention of the Communications Act.[5]

The Commission should also take into account external competitive and pricing pressures which have significantly impacted, and will continue to shape, the development of pay-per-call and similar services. Among these is the disproportionately high cost of 900 service, whether purchased by IXC's such as Pilgrim for resale, or when directly purchased by IXC's from the local exchange carriers ("LEC's"). The failure or refusal of LEC's to provide 900 blocking data via their line information data base (LIDB) also has been a significant contributing factor in consumer frustration with the ineffectiveness of 900 service blocks, and IXC frustration in being able to honor consumers' blocking wishes. The Commission should rely on its extensive experience and knowledge, and apply that to its analysis of the probable impact of various rules.

## II. Broader Prohibitions on Collect Calls Are Not Necessary

Expanding the prohibitions on the use of collect calling beyond the 800 service prohibition contained in TDDRA to

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[5] Communications Act of 1934, 47 U.S.C. §§151 et seq. (1993)("Act"). Section 151 of the Act encourages the Commission to adopt rules which encourage the development of efficient nationwide communications, and Section 157 states that it is a policy of the U.S. government to encourage the provision of new technologies and services to the public.

other calling patterns, is neither required by TDDRA or necessary. The 800/collect calling prohibition in TDDRA was added in the final version of TDDRA immediately before passage, and was specifically limited to the linkage between 800 service and collect calls. Presumably, if Congress or the sponsors of this provision had intended for the provision to sever linkage with any other calling patterns, the legislation would have expressly contained those provisions in similarly explicit fashion.

Not only is expanding the collect call prohibition not required under TDDRA, it is not consistent with or necessary to the consumer protection guidelines reflected in the TDDRA. TDDRA was specifically concerned about consumer protection and the possibility of consumer confusion which could result from this practice.[6] This restriction is not necessary, however, when used in conjunction with other calling patterns for which consumers typically expect to pay a charge for the transport of the call. In such an instance, the consumer has knowingly and willfully

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[6] It would appear that the primary concern of TDDRA was the practice of a few companies to return 800 calls with collect phone calls which were charged with rates significantly higher than the tariffed rates of a common carrier. Pilgrim condemns this practice, but notes that collect calling can be a legitimate and effective means for any party to reverse the cost of transport charges to other persons requesting service, access or information. All IXC's offer and provide collect calling service on a non-discriminatory basis to all callers of the network, and carriers should not only be providing this service in accordance with tariffed rates, but also in accordance with the specific provisions of Section 64.715 of the Commission's rules.

incurred upon itself a charge, an expectation which is completely different from the 800/collect calls scenario prohibited by TDDRA.

The use of collect calls in conjunction with calling patterns for which the caller is normally charged can actually provide more protection when combined with collect callback. This results from the fact that collect calls can be blocked and collect calls require positive acceptance. IXC's have access to LIDB collect call blocking information. The use of collect call screening provides IXC's an additional method of honoring consumer blocking choices.

When the collect calls are those offered by carriers pursuant to tariffed rates, the use of collect calls by IP's and other parties can effectively balance the risk of engaging in the pay-per-call business between the consumers, who at a minimum will be liable for the transport portion of the call, and the provider of a pay-per-call or other service which risks losing its ability to recover all other expenses and any profit if service charges are later refused.

Furthermore, many legitimate reasons exist for IP's to offer access to their audiotext services by calling their customers collect. The audiotext service may be billed to a credit card, or sold on an honor system where the consumer must

send payment before receiving additional service. IP's may choose collect calls because such calls transfer the cost of the call transport to the customer.[7] Collect calls also provide added security, especially when credit cards are involved. The IP can verify a customer's identity or telephone number to its billing information, and do so without bearing the cost of additional long distance charges, by disconnecting to verify and calling back collect. IP's which offer their service on a limited sample basis at no charge can limit and control access, and minimize the cost of long distance, by calling collect.

For all of these reasons, Pilgrim requests that the Commission refuse to expand the prohibitions on collect calls, and fully endorses the comments of AT&T[8] and others which make this argument. A broader restriction would unnecessarily interfere with these and other valid purposes for which parties place and accept collect calls. Pilgrim notes that even the National Association of Attorneys General ("NAAG"), in their proposed alternate resolution of this issue, recognize that

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[7] This cost factor is particularly important when one considers the differential cost between 800 calls, 1+ calls and 900 calls. Due primarily to exorbitant costs charged by LEC's to turn up and provide 900 service, and the costs charged by other carriers, the cost of transport of a 900 call is around 30 cents per minute, as compared to the cost of transport for similarly provided 800 service, of approximately 10 cents per minute. In addition, without number portability for 900 numbers, this situation is not likely to improve soon.

[8] See AT&T Comments, filed April 19, 1993, at 8-9.

collect calls need not be entirely prohibited with certain protections.[9]

## III. Definition of Pay-Per-Call

The Commission is proposing the adoption of a definition of pay-per-call which, in conjunction with its proposed restriction of all pay-per-call service to the 900 service exchange, creates a circular argument in the rules which makes the rules more confusing and difficult to apply, and may frustrate the actual intent of the rules. In the alternative, Pilgrim recommends that the Commission adopt a definition of pay-per-call which defines it as any service in which there are charges which are levied which are greater than or in addition to the common carrier transport charge tariffed at the Commission.[10]

This alternative definition would definitively separate common carrier transport from pay-per-call charges, encompass a broader range of calls which are similar in appearance to pay-per-call into the rules and extend the Commission's pay-per-call protections to more consumers. In addition, this revised definition would subject carriers who wish to bundle their

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[9] See Comments of the Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General, filed April 19, 1993, at 15.

[10] See the definition proposed by the FTC in its Proposed Rules.

transport charges with pay-per-call charges to the risk of not recovering their transport charge. Carriers who wish to charge only for their transport and require IP's to seek other billing and collection methods for their charges could insulate themselves from the risk of inability to recover such charges.

## IV. Assignment of Pay-Per-Call to Single NXX or NPA

As stated in its initial comments, Pilgrim believes that the assignment of all pay-per-call to 900 and one or two

cost of 800 service from AT&T is approximately $0.10 per minute, while the average cost of 900 service is $0.30 per minute.

The comparative cost of purchasing 900 access directly from the LEC's as opposed to purchasing 800 access, is even more astounding. Attached are the relevant pages from NYNEX and New England Telephone tariffs demonstrating that the comparative costs of purchasing 800 and 900 NXX's is that 900 NXX's are 4 to 4.6 times as expensive. This differential is even greater with the lower 800 service costs resulting from the adoption of 800 number portability. This extraordinary cost differential cannot be justified by any reasonable costing principles and contributes to a lack of competition in, and high cost of, the provision of 900 service.[11]

The second factor which contributes significantly to the lack of competition in the provision of 900 service is the lack of full number portability for 900 service. As noted in Pilgrim's comments, 800 service has become fully portable pursuant to orders of the Commission designed to increase

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[11] Pilgrim notes in its Comments filed before the FTC that this cost element is one of utmost concern when evaluating the cost impact of extended preambles during 900 calls, and operates as a primary incentive to limit preamble an "no charge" times. IP's are under tremendous economic incentive to limit preamble and other consumer protection features due to the high cost of 900 services, and problems related to call termination due to connection delays. See, e.g., Southwestern Bell Telephone Company, et al., CC Docket No. 88-287, Memorandum Opinion and Order, 69 RR 2d 448 (1991).

competition in the 800 service market. As there is no 900 service portability, competition is severely hampered due to the fact that entire NXX's must be purchased at a single time, as opposed to individual numbers being purchased. In addition, IXC's cannot compete for individual 900 service IP's as there is no ability to move a 900 number from one IXC to another absent of shifting the entire NXX. IP's which have trademark rights or goodwill value in specific numbers will not switch IXC's. Pilgrim urges the Commission to investigate both this pricing issue and the non-portability of 900 numbers in its quest for an answer to these problems.

## V. Other Recommendations

### A. LIDB Access

As alluded to above, Pilgrim believes that one of the primary causes of consumer dissatisfaction is the inability or unwillingness of the LEC's to provide access to the 900 and other call blocking detail in LIDB to IXC's. Were access to this information provided, Pilgrim and other IXC's would not only be able to validate for collect call blocks, but would also be able to screen calls for 900 and other service blocks.

B. Positive Acceptance as a Consumer Protection Tool

Pilgrim believes that positive acceptance before the initiation of charges is a better option for consumers which assists consumers in understanding that they will be charged for a call, and not being charged prior to understanding the charges and expressly accepting them. The Commission has successfully invoked positive acceptance rules in conjunction with collect calls,[12] and Pilgrim would urge the Commission to extend this option to other pay-per-call services.

C. Avoidance of Characterization

Pilgrim also notes that in the NPRM the Commission makes two or three references to the fact that 800/collect callback and other calling pattern combinations may have been deceptive or misleading to consumers. Pilgrim notes that these practices have never been prohibited by the Commission in the past, and were a common and non-prohibited practice in the industry.[13] While it is clear that switching an 800 call to a 900 call during a single call, or charging back an 800 number

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[12] See Section 64.715 of the rules, and Pilgrim's comments before the FTC at 13-14, attached.

[13] In fact, the practice of collecting billing information, such as a credit card or billing address, disconnecting and validating the information, and calling back collect has been a common practice for years pre-dating 900 service.

with a chargeable call detail may be deceptive, 800/collect callback has never been judged to be deceptive, and the Commission should avoid creating such an inference in this proceeding when there has been no actual investigation of this issue. Pilgrim believes it is sufficient to note that the practice of 800/collect calling has been prohibited by Congress going forward without making express findings regarding the practice.

## VI. Disconnection of Service

Pilgrim supports a rule prohibiting disconnection of local or long distance service for non-payment of pay-per-call services. Pilgrim cautions that a careful distinction should be made between traditional collect calls and pay-per-call and that rules be adopted which address those issues of primary concern to consumers.

Pilgrim agrees with the comments of AT&T and others in this proceeding that the disconnection rules should distinguish between the regulated charges of carrier and the unregulated charges of IP's. As noted in AT&T's comments, carriers cannot and are not required to determine the purpose of a call.[14] No attempt has been made until now to distinguish between the two types of charges for a customers' benefit. Although the

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[14] AT&T Comments at ii and 8.

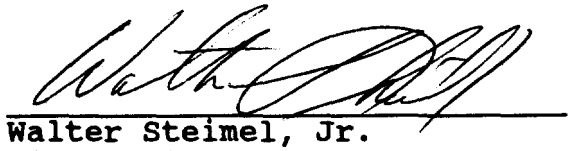
Commission is justified in seeking to prohibit disconnection for failure to pay for pay-per-call services, there is no basis for implementing a regulation that will impede a carrier's ability to collect charges from a customer for a tariffed service.

## VII. Conclusion

In conclusion, Pilgrim believes that the purposes of the Commission and the public will be best served by clear and certain rules, achieved through the adoption of rules designed to address the intended practices, and stay within the scope of TDDRA. The Commission should consider the impact of its proposals on competition, and carefully weigh its options in light of the competitive implications. Encouragement of full competition in this market will provide yet another valuable pro-consumer control on the practices of all parties involved.

Respectfully submitted,

**PILGRIM TELEPHONE, INC.**



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Dated: May 4, 1993

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Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

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| Proposed Telephone Disclosure Rule | ) | FTC File No. R311001 |

**COMMENTS OF PILGRIM TELEPHONE, INC.**

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Before the
FEDERAL TRADE COMMISSION
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| Proposed Telephone Disclosure Rule | ) | FTC File No. R311001 |

**COMMENTS OF PILGRIM TELEPHONE, INC.**

Pilgrim Telephone, Inc. ("Pilgrim"), by and through its attorneys, hereby files its comments before the Federal Trade Commission ("Commission") in response to the Commission's proposed telephone disclosure rules.[1] These rules have been promulgated pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992.[2]

Pursuant to the Disclosure Act, the Federal Communications Commission ("FCC") is simultaneously conducting a rulemaking to address issues related to the regulation of pay-

[1] Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, Proposed Rule, FTC File No. R311001, 58 FR 13370, March 10, 1993.

[2] Telephone Disclosure and Dispute Resolution Act of 1992, Pub. L. 102-556, October 28, 1992 ("Disclosure Act"). The Disclosure Act amended certain provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 1 et seq. (1993) ("Trade Act"), adding new Sections 5711-14, 21-24, and the Communications Act of 1934, 47 U.S.C. §§ 151 et seq. (1993) ("Communications Act"), adding a new Section 228.

per-call services offered through common carriers.[3] Pilgrim will also be a participant in those proceedings.

## I. Introduction and Statement of Interest

Pilgrim is an interexchange carrier ("IC") providing a variety of 800, 1+, 0+ and other telecommunications services on an interstate basis, and is an interested party which would be impacted by the proposals contained in the proposed rules. Like most IC's, Pilgrim carries a certain amount of traffic to and from information providers ("IP's"), and, to the extent possible, attempts to ensure that IP traffic is compliant with all applicable laws and regulations. In fact, from time to time, IP customers request that Pilgrim assist them in maintaining compliance with applicable laws and regulations, although Pilgrim does not itself provide any IP or pay-per-call services.

Under the current regulatory environment, both IC's and IP's may be subjected to substantial liability for the provision of a variety of services pursuant to often confusing and conflicting state and federal requirements, and inconsistent or uninformed interpretations of these various requirements. As the complexity of the interstate telecommunications network

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[3] Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, RM-7990, Notice of Proposed Rulemaking, FCC 93-87, released March 10, 1993 ("FCC Proposal").

increases, and the variety of service options offered by IC's increases, the proliferation of IP services which may vary widely in their provision will add to this confusion absent clear and concise rules. On behalf of itself, as a carrier, and in the interest of all of its customers, Pilgrim seeks to assist in the

Clarity of and certainty under the rules can be achieved partially through the adoption of safe harbors for various requirements. To the extent that rules can be drafted to explicitly delineate acceptable and unacceptable conduct, they can provide consumers with a reliable guide as to what to expect,

immediately by evaluating the conduct of the parties in terms of the safe harbor.

In addition, as new methods of doing business or providing service are created, they commonly do not fit within the regulatory framework which was the basis for the general rule. In such instances, parties often devote substantial time and resources attempting to interpret the prior rules and determine whether the new service offering complies with those rules. The adoption of safe harbors within the general rule, however, also can permit flexibility for the general rule to be interpreted for new technological and business developments by not excluding other methods of compliance -- but merely finding that, as a matter of law, compliance with the safe harbor constitutes compliance with the general rule.

## III. Specific Issue Analysis

As requested in the Proposal, Pilgrim addresses specific rule provisions by numbered commentary paragraph in the Proposal.

### Question 1. Definition of "Presubscription or Comparable Arrangement" (Section 308.2(e))

The language "between provider of pay-per-call service and consumer" contains some apparent ambiguity. By specifically

requiring a contractual arrangement between the provider of the service and the consumer, the Commission's rules seem to preclude construing the use of third party credit services as a preexisting contractual arrangement between the provider of pay-per-call services and the consumer.

Pilgrim believes that when a consumer initiates a call to a pay-per-call service, and then discloses any charging mechanism, which is in the control of the consumer, to the provider of the pay-per-call services, a contractual arrangement has been concluded which preexists the origination of the pay-per-call service due to the preexisting nature of the credit method. Specifically, Pilgrim seeks clarification that a consumer's disclosure of a charge or credit card to a pay-per-call provider constitutes a preexisting contractual arrangement.[5]

Question 5. Advertising of pay-per-call services (Sections 308.3 and 308.5)

As addressed further below, Pilgrim seeks a telephone solicitation exemption from the Commission's rules for automatic intercept messages provided by local exchange carriers ("LEC's")

[5] Examples of charge or credit card uses which would constitute such a preexisting contractual arrangement would include a caller calling a local exchange number and entering the caller's VISA number in order to gain access to and purchase real estate transaction information, or using an AT&T calling card in order to access and use AT&T's call or facsimile store and forward services.

and IC's. In some instances, an IP customer of a LEC or IC may either terminate service under a particular number or transfer service to a new number. In such instances, the LEC or IC may provide an automatic intercept message which states that the number has been discontinued, and which may or may not identify the new number taking calls.

As automatic intercept equipment is provided solely by a LEC or IC to assist in transitioning customers on the network, LEC's and IC's should be exempted from any price or other disclosure requirements. As neither the LEC nor the IC is connected with the IP, it would be unduly burdensome for the common carrier to bear responsibility for initiating a price or other disclosure since the carrier will not know the nature of the IP's service, the nature of the disclosures, or whether disclosures are even necessary. The carrier may not even be aware whether the new number contains a pay-per-call service, especially if located outside of the geographic areas served by that carrier. In addition, currently available automatic intercept equipment does not have the ability to provide price information, and is neither constructed nor maintained to provide variable information other than a statement of the number which has been called, and referral to other numbers, as necessary.

The only alternative to carrier provided automatic intercept equipment is to require the IP or previous holder of

the particular number to place their own recording on the line. In this instance, however, someone will be required to pay for use of the line and the transport of the message. If the IP has gone out of business, there is no one left to pay that charge, and in many cases an end user may be required to pay a charge merely to find that a number has been terminated or that calls are being taken by a new number. Especially in light of the very high cost associated with operating over 900 service, as opposed to other MTS services, IP's may refuse to provide a message on a line which is no longer being used for pay-per-call. Automatic intercept equipment is the only solution which will avoid customer confusion and frustration, and preserve the efficiency of the network.

Question 10. Clear and Conspicuous Requirements for Disclosures (Section 308.3(c)(3))

Pilgrim believes that the specific requirements should be stated as a safe harbor, with the option that other clear and conspicuous statements which are less than the safe harbor could be satisfactorily implemented on a case-by-case basis. IP's would have the flexibility to ensure compliance by staying within the safe harbor, or in instances in which the safe harbor rules would not apply to a particular type or format of advertisement, still demonstrate compliance by staying within a more generalized "clear and conspicuous" standard.

Pilgrim also believes that the "clear and conspicuous" standard must be addressed as a whole, that is, the advertising disclaimers and preambles must be construed together to determine if consumers could be confused. Adoption of this concept could be particularly important where several services could be activated under a single number, each at a different cost. Applying this standard to the whole service would provide a valuable method for further assuring consumer understanding, and could permit a relaxing of the advertising restrictions in instances where positive acceptance is used to ensure that consumers understand the charges, and specifically assent to being charged.

Question 15. Requirements for Disclosures in Advertising

As discussed with respect to Question 10, above, the advertising disclosure requirements should take into account the total perception of the consumer, and afford the clearest and most accurate description of the services offered, and the related charges. Pilgrim proposes that the detailed disclosure standards in the rules constitute a safe harbor, and that the Commission also adopt performance standards within which companies could demonstrate compliance. This method would provide flexibility to fashion compliant advertising for different advertising media and business and technical developments, and could permit flexibility on issues such as